STATE OF MICHIGAN IN THE

SUPREME COURT

DRAGEN PERKOVIC,

Plaintiff-Appellant,

-vs-

ZURICH AMERICAN INSURANCE COMPANY,

Defendant-Appellee.

_____/

Supreme Court No.152484

Court of Appeals No. 321531

Wayne County Circuit Court No. 09-019740-NF

DEFENDANT-APPELLEE'S BRIEF IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

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ORDER BEING APPEALED FROM AND RELIEF REQUESTED

Plaintiff – Appellant Dragen Perkovic has correctly identified the Court of Appeals decision dated September 10, 2015 as the Order he is appealing from. Defendant-Appellee Zürich American Insurance Company requests that this Court deny the application for leave to appeal for the reason that it does not satisfy any of the mandatory requirements for granting leave so forth in MCR 7.305 (B)

COUNTER-STATEMENT REGARDING QUESTIONS PRESENTED

I.
SHOULD THIS COURT GRANT LEAVE TO APPEAL TO RECONSIDER THE COURT OF APPEALS APPLICATION AND INTERPRETATION OF THE STATUTORY LANGUAGE OF MCL 500.3145 (1) , RESULTING IN AFFIRMING THE GRANT OF SUMMARY DISPOSITION TO THE DEFENDANT ON THE BASIS OF THE ONE-YEAR LIMITATIONS PERIOD PROVIDED IN MCL 500.3145(1)?

Plaintiff-Appellant says "Yes."

Defendant-Appellee says "No."

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Defendant-Appellant, Zürich American Insurance Company adopts by reference the extensive statements of material proceedings and facts set forth in the trial court's decision, and the Court of Appeals decision.

I. THE COURT SHOULD NOT CONSIDER AN APPLICATION FOR LEAVE TO APPEAL THAT DOES NOT SATISFY ANY OF THE REQUIREMENTS OF MCR 7.305 (B)

Plaintiff Appellant, Dragen Perkovic, has applied for review of summary disposition granted to Defendant Appellee Zürich American Insurance Company by the trial court, and affirmed by the Court of Appeals. Such an application must be based on one of the six mandatory grounds set forth in MCR 7.305 (B). Appellant-Perkovic does not specifically invoke any of the grounds, but impliedly relies upon MCR 7.305 (B) (3):

> (3) the issue involves legal principles of major significance to the state's jurisprudence; [MCR 7.305(B)(3)]

The only issue of significance to the state's jurisprudence raised by Appellant-Perkovic is the Court of Appeal's adherence to the well-established principle of statutory interpretation:

> "When the wording of a statute is unambiguous, ' the Legislature must have intended the meaning clearly expressed and the statute must be enforced as written. No further judicial construction is required or permitted.'" [Appellant-Perkovic's Application for Leave to Appeal, page 9 – "Application"]

Appellant Perkovic claims that this maxim is properly applied by examining the last sentence of the statutory provision in question, MCL 500.3145 in isolation, and ignoring the sentence in the statute that precedes it, which requires, not surprisingly, that the notice mandated by 500.3145, be intended to give notice, and to actually furnish notice of a claim for Personal Injury Protection (PIP) No Fault benefits. The trial court, and the Court of Appeals acknowledged this requirement of the statute; and by doing so followed the equally well-established dictate of statutory interpretation that

"… every word should be given meaning, and we [courts] should avoid a construction that would render any part of the statute surplusage or nugatory." *Hannay v Transp Dep't*, 497 Mich 45, 57; 860 NW2d 67 (2014).

Perkovic asserts that proper statutory interpretation considers only the words written in the statute without appending judicially-improvised terms. This is true, but it is equally true that proper statutory interpretation prohibits judicial surgery – reading words out of the statute -- words that must be presumed to have a purpose. The requirement for MCL 500 3145 notice to be given by "a person claiming to be entitled to [PIP] benefits" is in the words of the statute. The trial court and appellate court's interpretation of the actual words of the statute may give rise to disappointment on the part of Appellant-Perkovic, but the task falls squarely within the proper ambit of those courts.

The Court of Appeals' opinion does not involve a substantial question as to the validity of a legislative act (MCR 7.305 (B) (1)); it interprets the words of the statute without improper addition or subtraction.

For the same reason, the matter at issue does not involve legal principles of major significance to the state's jurisprudence (MCR 7.305 (B) (1)). Interpretation of a statute, in accordance with the words of the statute and accepted principles of statutory interpretation, is a daily and unremarkable occurrence in the trial and appellate courts of this state.

No other grounds under MCR 7.305 (B) for granting leave to appeal to the Supreme Court are cited by Appellant-Perkovic, and none of the other acceptable reasons for granting leave have any application in this case.[1] In short, there are no acceptable grounds for granting Appellant-Perkovic's Application for Leave to Appeal.

[1] MCR 7.305 (B) (2) applies to cases by or against the state or its agencies; 7.302 (B) (4) applies only to appeals before a decision is rendered by the Court of Appeals; 7.302 (B) (5) applies to a decision squarely conflicting with existing precedent in the Supreme Court or Court of Appeals – no such conflict is asserted by Perkovic; and 7.305 (B) (6) applies to appeals from the Attorney Discipline Board.

RELIEF REQUESTED

Defendant-Appellant, Zürich American Insurance Company requests that this Court deny the Plaintiff-Appellant's application for leave to appeal.

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